IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4883 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LUHAR JIVABHAI FULAJI

Versus

STATE OF GUJARAT

Appearance:

MR MC BAROT for Petitioner Nos. 1-5

MR PR ABHICHANDANI, APP for Respondent - State

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 01/08/2002

ORAL JUDGEMENT

#. Rule. Mr.P.R.Abhichandani, learned APP waives service of notice of rule for the respondent - State.

#. This is a second bail application, after submission of charge-sheet. The first bail application filed before the charge-sheet, was permitted to be withdrawn, with a

liberty to file fresh application before the trial court. Accordingly, after submission of the charge-sheet and receiving F.S.L. report, the fresh application was filed before the trial Court and the said application was rejected on 15th July, 2002. The learned Judge was of the opinion that as per F.S.L. report, the death of the deceased Antraben was not caused due to poisoning, but caused due to hanging. Considering the allegations made against the petitioners, the learned Judge has rejected the bail application of the accused. Hence, this petition.

#. Mr.Barot, learned advocate for the petitioners has submitted that except general allegations, there is no specific allegation made against the accused. He has submitted that there is always a general tendency of the people to include as many as members of the family. The petitioner No.4 Luhar Rasanga Fulaji, the husband of the deceased and his brother Luhar Jivabhai Fulaji were serving in diamond business at Surat. The parents-in-law i.e. petitioner Nos.2 and 3 have no role to play. The petitioner No.5 along with brother-in-law is still not involved. He has, therefore, submitted that all the accused are required to be released on bail.

#. From the record, it appears that the information was lodged to the Police on the death of Antraben and it was registered as accidental death, which on the face of it is false. From the F.I.R., it cannot be said that the general and vague allegations are made against the accused. It is unfortunate that the life of young lady within span of 10 years of marriage, was brought to an end her life only because of demand of dowry, as stated in the F.I.R. When there is a prima facie strong case against the accused, then in such type of offences, the accused cannot be released on bail, more particularly when the learned Judge has not exercised his discretionary power in favour of the accused.

#. At this stage, Mr.Barot has submitted that all the 5 accused of the family are in jail since 16th February, 2002 and, therefore, at least trial be expedited. Considering the facts of the case, I am of the opinion that this is a fit case, wherein the trial Court be directed to expedite the trial. The trial court to see that the trial is over latest by 31st December, 2002. The accused are also directed to fully cooperate with the trial Court. Mr.Abhichandani assures of this Court that his counter part i.e. learned APP before the trial court shall also fully cooperate and the I.O. will be kept present at the time of trial.

#. With these directions and observations, this petition is dismissed. Rule is discharged.

[B. J. SHETHNA,J.]

vrp